

Testimony of Jon Kreucher
Howard & Howard Attorneys PLLC
SB 430
Senate Committee on Local, Urban and State Affairs
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Good afternoon, Chairman Van Woerkom and honorable members of the Committee.

My name is Jon Kreucher. I am a partner with the law firm of Howard and Howard PLLC. Howard & Howard is the most experienced firm in the state in the areas of renewable, alternative and independently-produced power. We also have an active telecommunications practice. On behalf of our firm's clients in these areas, it is my pleasure to speak in support of SB 430. Support for this bill is particularly important because it helps to clear the path for more economic investment in our state without placing any public interest at risk.

Your consideration of this Bill is very timely. You'll recall that Michigan's energy policy was dramatically re-written last fall when Public Acts 286 and 295 were enacted. Over the course of the last two months or so, Consumers Energy and Detroit Edison have submitted Renewable Energy Plans which have been offered to comply with the new renewable energy requirements of Act 295. According to the utilities, each will predominately rely on wind turbines to generate renewable energy. Of course, this was an anticipated outcome when Act 295 was passed, because Michigan also hopes to capture the manufacturing jobs related to the development of a wind-related industry in our state.

Act 295 created the demand for renewable energy and Act 286 contemplates the possible construction of new plants fueled through traditional resources to replace an aging fleet of existing generating facilities. However, despite the passage of Acts 286 and 295, some underlying obstacles still exist with respect to the speed at which this development and

the related job creation can occur. One such potential obstacle is found in the "Airport Zoning Act." As we read it, SB 430 is intended to remove that obstacle.

The Airport Zoning Act was passed nearly six decades ago. As originally envisioned, local governments would form a body which would attend to zoning for areas within the flight path of local airports. If such flight paths encompassed areas in more than one local jurisdiction, joint intergovernmental boards were formed, and joint controlling ordinances or resolutions had to be passed. If a structure were to be placed within the flight path areas, a permit could be sought if consistent with the underlying zoning. Variances on height restrictions could be sought. This approach required a significant amount of intergovernmental cooperation, the naming of several boards, and a complicated appeals procedure.

About ten years after the Airport Zoning Act was enacted, Michigan passed a new law called the Tall Structures Act. The Tall Structures Act is a more comprehensive approach to issues which relate to the height of structures permitted around airports. The FAA also has regulations that must be followed.

As a consequence of the more recent and comprehensive approach to such issues, it has been our experience that many of the boards and processes required by the Airport Zoning Act are no longer in place, as their former role in many places has been supplanted by newer legislation and regulatory requirements. These newer requirements continue to protect the public interest. Nevertheless, permitting requirements continue to exist under the Airport Zoning Act. It can often be difficult to obtain such permits, not because of the related public interest issues but because the bodies that were to review such matters are no longer in existence and may even have to be reconstituted, sometimes across multiple jurisdictions.

In some cases this can cause very significant delays. Financial institutions also require that all local, state and federal requirements be met, including permitting. Therefore, while more modern statutes serve an overlapping purpose, the requirement of a permit

such as the one at issue here could unwittingly delay the type of investments that Michigan needs at this moment.

SB 430 strikes an appropriate balance. The Bill does not repeal the Airport Zoning Act. Instead, the Bill first requires a developer to receive a permit under the Tall Structures Act; if that is the case, SB 430 also requires a developer to make a permit request under the Airport Zoning Act, but places a 90 day limit on the time that such a request can be pending. In this way, those local governments that still maintain the organizations required by the Airport Zoning Act can continue to influence the decision-making process. Those without such organizations, however, will not unduly delay the development already permitted under the Tall Structures Act.

We appreciate your consideration of Bill 430, and urge its passage. I will be happy to address any questions you may have.